

June 7, 1978

TO: CITY COUNCIL

FROM: CITY ADMINISTRATOR

SUBJECT: POST JARVIS-GANN PROPOSITION 13 PRELIMINARY BUDGET REVIEW

*Real prop. Tax -- Gov
Municipal budgets -- " -- Yuba city
Yuba city -- Approp. & approval.*

The report accompanying the Preliminary Budget for fiscal year 1978-79, indicated that the budget was definitely a preliminary budget. The action of the voters at the June Primary election has made that statement very true. A review of those funds affected by property tax reductions is as follows:

GENERAL FUND

Operating Budget Expenditures \$ 3,348,675

Revenue Loss:

Secured	\$ 884,000
Unsecured	89,100
Homeowners Relief	156,000
Business Relief	<u>101,000</u>

TOTAL REVENUE LOSS \$ 1,230,100

PARKS & RECREATION FUND

Operating Budget Expenditures \$ 195,039

Revenue Loss:

Secured	\$ 142,000
Unsecured	14,300
Homeowners Relief	25,000
Business Relief	<u>16,200</u>

TOTAL REVENUE LOSS \$ 198,500

SEWER FUND

A portion of the tax rate has gone to the Sewer Fund for construction of sewer lines under 12" because the Revenue Plan Guidelines do not make provisions for small lines.

Revenue Loss:

Secured	\$ 51,000
Unsecured	5,100
Homeowners Relief	5,800
Business Relief	<u>5,800</u>

TOTAL REVENUE LOSS \$ 70,900

TOTAL ALL FUNDS LOST REVENUE \$ 1,499,500

This revenue loss anticipates no property tax revenue, which I feel is the way we must think at this point in time. When the Legislature determines how the 1% is to be distributed and when it is determined whether or not a City is a "district", then we may receive some revenue from the 1% tax rate. If the ratio of City revenue to the 1% is the same ratio as it was to the total composite tax rate, the revenue to the City might be about \$500,000. However, the unknowns about distribution and the question about a City being a "district", I feel, put the City in a position of having to assume \$0 revenue from property taxes until these questions have been answered.

Three potential approaches to bringing the budget into balance are as follows:

1. Reduce Expenditures

Total Materials, Supplies and Acquisitions in the General Fund and Park & Recreation Fund total \$1,124,994 which, if totally eliminated, would not balance. The area where cuts would have to be made would be in the area of employees. A reduction of roughly 40% would have to be made in these two funds in order to balance.

2. Increase Other Fees & Charges

To make up the revenue loss would require extremely large increases in other charges. A review of revenue estimates would indicate the magnitude of increases necessary. Attached is a report prepared by the League of California Cities on the subject of fees and taxes to assist the Council in this regard. IMPORTANT! Don't forget the Water Fund is already in trouble and attention must be given to water rates in addition to other budgetary considerations.

3. Capital Improvements

Another approach would be to transfer funds budgeted for Capital Improvements back to the operating budget. This is like borrowing from your savings account to meet on-going monthly expenditures. We have prepared a listing of Capital Improvement Projects for Council members to make priority determinations should Council decide to go this direction.

SUMMARY

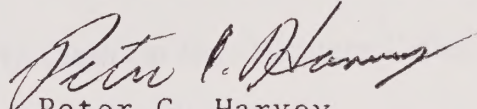
The City Council, as policy makers for the City, must interpret the message of the voters and provide guidance and direction to the staff.

It is imperative that budget determinations be made prior to July 1,


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1978 so that we can start the fiscal year knowing where we stand.
I do not feel we can incur expenses for which we do not have the
funds to cover.

Respectfully submitted,


Peter C. Harvey
City Administrator

PCH:ps
Attach.



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California Cities
Work Together

League of California Cities

Sacramento, California

May 10, 1978

TO: Mayors, City Managers and City Clerks in Non-Manager Cities

SUBJECT: Issue Paper - Proposition 13 and "Special Taxes"

RESTRICTION OF LOCAL GOVERNMENT REVENUE-RAISING ABILITY

Section 4 of the Jarvis-Gann Initiative (Proposition 13) would permit cities, with the approval of a two-thirds vote of the qualified electors, to impose "special taxes." Putting aside other questions of interpretation, including those raised by the references in Section 4 to "district," the question is:

What are or could reasonably be included in and, conversely, excluded from the term "special taxes" as it relates to the revenue-producing authority of cities?

The following has been prepared to assist city officials in their understanding of this provision of Proposition 13.

Included in "Special Taxes"

While not totally definitive, taxes are commonly classified as either property or excise. Property taxes are, of course, those levied and assessed in accordance with the value of property, i.e., ad valorem. Historically, an "excise" was a tax upon a privilege. Today, however, any tax which does not fall within the classification of a tax directly on property (ad valorem tax) is said to be an excise tax. Therefore, the "special taxes" referred to in Section 4 can reasonably be said to include any kind of excise tax except "a transaction tax or sales tax on the sale of real property." The latter are expressly excluded by the terms of Section 4.

1. There is a wide variety of excise taxes imposed by cities. Among those commonly imposed and as to which the restrictions of Section 4 of the Jarvis-Gann Initiative would clearly apply are the following:

Business licensing tax for revenue purposes only (a tax upon the privilege of conducting a business within the city).

Parking and business improvement area tax (an additional business tax imposed on a benefit area basis).

Sales and use tax (a tax on the privilege of selling tangible personal property at retail and a complementary tax on the storage, use or other consumption of tangible personal property purchased from a retailer).

Transient room tax (hotel or "bed" tax - on the privilege of occupying a motel-hotel room or renting a mobilehome for any period of 30 days or less).

Bedroom or property development tax (a tax on the privilege of building a dwelling unit or mobilehome park space and, in some cities, on commercial and industrial development - validated for general law cities as a business license tax).

Utility Users Tax (a tax on the consumer of utility services computed in accordance with the amount of consumption but imposed without regard to the source of or rendition of the service; this tax has been available to charter cities only).

2. Other excise taxes imposed by an isolated few chartered cities, or available to chartered cities, which would also be "special taxes" within the restriction of Section 4 are the following:

Employee license fee (imposed by Oakland on persons working in the city - question of validity now pending before State Supreme Court).

Equine tax (imposed by Los Angeles on the privilege of keeping an equine).

Parking tax (imposed by San Francisco and Inglewood on the occupancy of a parking space in a "parking station" for which any charge is made).

Enplaning tax (a charge on passengers at municipal airport).

3. There are also other impositions by cities which conservatively should be assumed to fall in the Proposition 13 "special taxes" category. While these might commonly be thought of as service charges rather than taxes, this assumption appears correct not only because the particular impositions are not directly related to the source and/or amount of services actually rendered but also in light of impressive judicial precedent likening the type of charge to an excise tax. In this category of excise taxes are the following:

Garbage or rubbish charges based upon occupancy (a charge on the occupants of real property for the privilege of accumulating garbage or rubbish and having available collection service therefor - deemed to be supportable under the city's taxing power and therefore categorized as an excise tax in City of Glendale v. Trondsen, 48 Cal.2d 93).

Sewer connection charges (a charge for the privilege of connecting to the city sewer system validated as an exercise of the taxing power and held to be "in the nature of an excise tax" in Associated Home Builders v. City of Livermore, 56 Cal.2d 847).

Water connection charges (a charge for the privilege of connecting to the city water system and analogous to sewer connection charges categorized as excise taxes in the Livermore case, supra).

Annual sewer service standby or immediate availability charge (authorized by Gov.C. Section 38902 to be imposed "whether the sewer service is actually used or not" and if it is to be collected on the county tax roll is required to be stated on the tax bill separately from all "other" taxes).

Annual water service standby or immediate availability charge (authorized by Gov.C. Section 38743 to be imposed "whether the water service is actually used or not" and if it is to be collected on the county tax roll is required to be stated on the tax bill separately from all "other" taxes).

As to the foregoing, it should be noted that arguments might be made in support of their exclusion from rather than inclusion in the "special taxes" restriction in Proposition 13. As to garbage occupancy and sewer connection charges, such argument would focus on judicial authority confirming both as a valid and proper incident to the exercise of the police power to provide the garbage collection and sewer systems (garbage: Davis v. City of Santa Ana, 108 C.A.2d 669, and City of Glendale v. Trondsen, 48 Cal.2d 93; sewer connection: Longridge Estates v. City of Los Angeles, 183 C.A.2d 533, and Harter v. Barkley, 158 Cal. 742). Since a city derives its authority to establish a water system from the Constitution (Art. XI, Section 9) and the authority is deemed self-executing and thus needing no implementing statutory authorization, water connection charges might be excluded from the "special taxes" restriction of Proposition 13 on the theory that the source of their authority stands on an equal plane with this proposed constitutional restriction. As to all of the foregoing impositions, the "benefit theory" could be asserted to analogize them to service charges rather than excise taxes. In each case, recognizable benefits are conferred and received, in the form of the availability of the service and its potential or actual use.

Excluded From "Special Taxes"

1. Is is well-established that charges imposed for the use of a wide variety of services rendered by cities are not taxes but rather in the nature of tolls or rents for the benefits received by the user of the service. Further, the amount of the fees or charges is a matter of discretionary determination by the city council and as long as that amount is not grossly excessive or all out of proportion to the benefit received, the charge imposed is presumptively valid. Included in this category of revenue-producing service charges which would not be within the "special taxes" limitation of Proposition 13 are the following:

Garbage, rubbish and trash collection charges or fees (based upon use of the service rather than simple occupancy of property).

Sewer service charges or rentals (the monthly, bi-monthly, etc., charges imposed for use of the city sewer systems, but not necessarily computed in accordance with the amount of use).

Water service charges or rentals (the monthly, bi-monthly, etc., charges imposed for use of the city water systems, but not necessarily computed in accordance with the amount used).

Park and recreational facilities use fees (e.g., swimming pool fees, mooring charges, camping fees, golf course fees, etc., all imposed upon actual users of the facilities).

2. Cities also commonly impose an infinite variety of service charges in conjunction with the enforcement of regulatory ordinances. These are more definitively described as regulatory license or permit fees. They may be imposed in almost all regulatory fields and find their source of authority not necessarily in an express grant but in the authorization for the regulation being enforced, whether it stems generally from the constitutional police power or is derived from express statutory grant. By their very nature these fees are limited in amount, i.e., the amount charged must bear a direct relationship to the costs of administering the particular regulation. Being so limited, regulatory license or permit fees should not be revenue-producers. There is no doubt that such fees are excluded from the "special taxes" restriction of Jarvis-Gann. Among the many fees which fall into this category are the following:

All types of permit fees (building, electrical, plumbing, curb cuts, etc.).

All types of planning, zoning and subdivision processing fees (plan checking, conditional use permits, variances, tentative or final maps, etc.).

All types of special business license permits (amusements, circuses, taxicabs, ambulances, massage parlors, etc. - these are, of course, to be distinguished from the business license taxes for revenue purposes which are also commonly imposed on these types of business operations within the city).

Alternate Interpretation of "Special Taxes"

In response to inquiries initiated by the City Attorney of Torrance, the Legislative Counsel of California has rendered an opinion which differs from the League's analysis just presented. The following are two excerpts from that opinion:

"In view of the conflicting and nebulous discussion of "special taxes," it is difficult to define precisely what the term is supposed to mean in Section 4 of the initiative.

"However, we think that, in general, a special tax will be determined by the purpose for which it is imposed, rather than by the nature of the tax. For example, counties are presently authorized to impose a sales tax at the rate of 1 and one-quarter percent on the gross receipts of retailers derived from the sale of tangible personal property (subd. (a), Sec. 7202, R. & T. C.). The revenue derived from the rate in excess of 1 percent is reserved for the "special" purpose of assisting local transportation (Sec. 29530 et seq., Gov. C.), while the balance of such revenue is county "general" funds, which may be used for any lawful county purpose.

"In other words, if the Jarvis-Gann Initiative is adopted, we think an increase in a county's sales tax to provide additional funds for transportation would be a "special tax" requiring two-thirds approval of those voting on the issue, while an increase in such tax for county general fund purposes could be accomplished by the board of supervisors without submitting such increase to the voters.

"This reasoning, if approved by the courts, would make it possible for local governmental entities which provide general governmental services to impose a wide variety of taxes for general fund purposes without submitting the question to the voters, if the taxes can be reasonably adapted to local imposition."

* * *

"Thus, although we cannot precisely define a "special tax," as such term is used in the Jarvis-Gann Initiative, we think the following would apply to such a tax.

"(a) Counties, general law cities, special districts, including school districts, and chartered cities governed by general laws on tax matters will not be able to impose any tax without specific authorization from the Legislature.

"(b) None of the above entities, including all chartered cities, will be able to impose a tax preempted by the state, either by the Constitution or by statute, unless the Legislature enacts appropriate legislation. As will be noted below, an insurance tax, a real property transfer tax, and an ad valorem property tax could only become a special tax if the Constitution would be subsequently amended to provide therefor.

"(c) A general tax imposed by a county or city to raise revenues for its general fund would not be a special tax and could be validly imposed by a board of supervisors or a city council without a vote of the people.

"(d) Some districts created for a single purpose have no "general" functions, and, therefore, any otherwise permissible tax would require a two-thirds vote, as the tax would be imposed for a "special" purpose."

Effect of 2/3 Vote Requirement

Proposition 13 requires two-thirds of the "qualified electors" to approve special taxes. While there is much speculation about the definition of "qualified electors," many are equating the term to mean "registered voters." Assuming this interpretation is sustained, the effect of the 2/3 requirement can be understood by considering voter turnout figures for recent elections. In the general presidential election of 1976, it would have taken 81% of those voting to approve a special tax. Less than 20% of the voters could have blocked the imposition of a tax. In the municipal elections held this spring, with an average turnout of 31%, it would have taken over 200% of those voting to achieve the required approval by 2/3 of the registered voters.

It will obviously be very difficult for local agencies to impose or increase "special taxes."* The proposition's proponents view this with satisfaction, the opponents with anxiety.

Recommendations

1. Consider the economic and political implications of converting certain taxes currently imposed to a base and rate that will reflect economic growth. In this light, a business tax based on gross receipts would be preferable to a flat rate tax. A development tax based on the cost of construction would be preferable to a flat rate per bedroom.
2. Consider the advisability and feasibility of converting garbage charges based on occupancy to a garbage collection fee based on service.
3. Consider the economic and political implications of adjusting the base and/or rate of existing taxes or imposing new taxes prior to July 1, 1978, when the 2/3 requirement would take effect.

*General law cities, and those cities whose charters contain a provision similar to Government Code Section 36937, should be mindful of the possibility of imposing or increasing "special taxes" in the June 7-June 30 interim prior to the July 1 effective date of Section 4 of Proposition 13. Section 36937 provides that an ordinance "relating to taxes for the usual and current expenses of the city" takes effect immediately.

Examples of Proposed Tax Increases

Many cities are proposing or have implemented tax and fee increases in preparation for revenue reductions resulting from passage of Proposition 13. The following provide a few examples.

Milpitas:

New Taxes and Fees

Transient Occupancy
Gaming and Vending Machines
New Residential Development
Fire Prevention Inspection Fees

Increases in Existing Fees

Recreation
Zoning and Subdivisions

Pasadena:

New Taxes and Fees

Gross Receipts Business License Tax

Increases in Existing Taxes and Fees

Sewer Use Charges (From \$12 - \$22)
Ambulance Fees (from \$25 - \$45)
Building Permit Fees (1% valuation)
Overdue Books (from 5¢ to 10¢)
Utility Users Tax (100% increase)
Business Tax (20% increase)
Construction Tax (50% increase)

Sacramento:

New Taxes and Fees

Entertainment Tax (on all ticket sales)
Payroll Tax (patterned after Oakland's)
Utility Users Tax on City-Owned Utilities
Park Development Fee/Modification

Increases in Existing Taxes and Fees

Utility Users Tax on Non-City Owned Utilities
Business Operations Tax
Transient Occupancy Tax

Monrovia

New Taxes and Fees

Hotel-Motel Tax

Franchises: garbage, taxi, ambulance, etc.

Increases in Existing Fees and Taxes

Business License - Extension and Increase (100%)

Animal Licenses (200%)

Building Permit Fees (100%)

Electrical Permits (100%)

Air-Conditioning Permits (100%)

Excavation Permits (100%)

Plumbing and Sewer Permits (100%)

Rents and Concessions (5%)

Police Services (100%)

Community Center Fees (100%)

Examples of Other Contingency Plans

Examples of cities that have prepared contingency plans which do not include proposed local tax increases are:

Santa Barbara:

A "base-line" budget containing no revenue from property taxes has been proposed. Reductions will all be in general fund expenditures. The general fund budget will be \$14.5 million with 470 positions, compared to the current year's budget of \$16.1 million and 544 positions. In the event revenues are higher than anticipated in the base-line budget, an "add-on" plan has been prepared which would restore a maximum of \$1.3 million and 46 positions to the general fund budget.

San Anselmo:

Within an overall reduction to an expenditure level 32% below the reduced level otherwise recommended, the alternative budget shows specific reductions as follows:

	% Reduction
Town Council	60%
Capital Improvements	53%*
Library	46%
Parks & Recreation	46%
Community Center	38%
Street Maintenance	35%
Planning, Engineering, Inspection	32%
Administration	30%
Police	26%
Attorney	23%
Fire	21%
Non-departmental	9%
Contingencies	<u>-0-%</u>
Weighted Average	32%

*Zero in future years. In 1978-79 contractual commitments must be met.

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